November 20, 2009

CC:PA:LPD:PR (REG-159704-03)
Room 5203
Internal Revenue Service
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Ben Franklin Station
Washington, DC 20044

By email to nhqjbea@irs.gov

I am writing on behalf of Buck Consultants to present comments on the Proposed Regulations under 20 CFR 901 published in the Federal Register of September 21, 2009, relating to the enrollment of actuaries under Section 3042 of ERISA.

Buck Consultants employs enrolled actuaries in more than 20 offices across the United States. We have maintained continuous qualified sponsor status under Joint Board regulations since 1988 and have provided in-house continuing education sessions since before the enactment of ERISA.

Generally we welcome the proposed changes to the regulations. Clarification of the definition of core subject matter, reduction in required core hours for enrolled actuaries after their initial renewal, two hours of core subject matter on ethics, the change in qualifying sponsor renewal cycle, expanded due diligence consistent with Circular 230, and expanded information on the renewal form for qualified sponsors are all welcome changes.

The following are our comments on areas of the proposed regulations we believe should be clarified or changed.

Pension Actuarial Experience

Under 901.1(i), an applicant for enrollment must provide information on pension actuarial experience that is signed by the applicant's supervisor; if the applicant's supervisor is not an enrolled actuary it must be signed by an enrolled actuary with knowledge of that experience.

This requirement may not always work effectively unless the regulations also require an enrolled actuary to provide verification when requested by a candidate for enrollment. Applicants for enrollment may work for more than one employer or supervisor while gaining appropriate actuarial experience. The regulations should place an obligation to provide a timely verification on an enrolled actuary when requested.

Renewal Deadline

Under 901.11(d)(1) and (e), timely renewal of enrollment requires the actuary to certify, by the last day of February, completion of the required hours during the three year period ending on the

preceding December 31. An enrolled actuary with insufficient hours on December 31, who then completes sufficient hours before the end of February (before the certification for re-enrollment is even due), is placed on inactive status as of April 1. The examples illustrate that this actuary is immediately eligible to apply for re-enrollment.

We recommend the regulations be modified to provide that an applicant who otherwise meets the requirements for renewal of enrollment is eligible for renewal on the relevant April 1 if the required hours (core, including ethics, noncore and formal) are certified on a renewal application submitted by the last day of February, even if some of those hours were earned after December 31, providing those hours are used for only one renewal application. There should be a corresponding example.

Required Physical Attendance

Under 901.11(f), 901.11(f)(2)(ii)(A), and 901.11(g) one-third of the required credit hours must be earned by Formal Programs which require physical attendance of the enrolled actuary at the same location as the speaker. The proposed regulations exclude from this definition of a Formal Program webcasts under 901.11(f)(2)(ii)(C).

We recommend revision and clarification of this requirement. Buck provides live webcast access to our qualified continuing education programs through streaming intranet video and telephone, to attendees in offices across the country. Every attendee, whether in the same room as the speaker or on a phone and intranet hookup at a different location, enjoys the same educational experience. Every attendee is able to interact with the speaker by asking questions on the phone or by submitting them through email, and getting responses live during the web cast.

We point to the recent revision of the American Academy of Actuaries qualification standards for issuing statements of actuarial opinion. Under those standards, which distinguish between educational session presented live, and educational sessions presented from a library of recorded information, a webcast is considered a live presentation if the actuary can interact with the speaker in real time.

I am familiar with the level of education derived by Buck's enrolled actuaries through attending live sessions in the same room as the speaker(s) and through attending a live webcast. There is no difference in the educational experience of both types of program. In addition, a requirement that enrolled actuaries attend live presentations in the same room as the speaker(s) for one-third of the required hours will impose significant burdens and potential hardships on many enrolled actuaries, particularly those who work in small firms, and those subject to business travel restrictions by their employers.

We recommend revision of this requirement by recognizing that there are two types of webcasts:

Live webcasts should be defined as webcasts that provide for the facility to verify attendance and that provide a method for direct interaction between attendees and the speaker(s), so that the enrolled actuary can ask questions and make comments to the speaker and receive answers to those comments and questions.

Other webcasts should be defined as any webcast in which the enrolled actuary cannot directly interact with the speaker(s).

We recommend that live webcasts be treated as Formal Programs under 901.11(f)(2)(ii)(A) and that an enrolled actuary who attends such a webcast should be treated as being "physically present" for that purpose. We recommend that other webcasts be treated as Teleconferencing under 901.11(f)(2)(C).

Recordkeeping Requirements

The preamble to the proposed regulations discusses a proposed requirement that, in the event an enrolled actuary is audited by the Executive Director, the qualifying sponsor, not the enrolled actuary, will be responsible for providing copies of written outlines or textbooks and related material.

While 901.11(j)(1) of the proposed regulations contains the rules for the records required to be maintained by an qualifying sponsor, they lack a clear requirement to maintain copies of such outlines and textbooks. We recommend that the proposed regulations be modified to clarify the requirement.

We also recommend the Joint Board issue proposed regulations on the required recordkeeping for live webcasts. We provide our enrolled actuaries with the opportunity to watch live webcasts from other educational bodies, e.g., ALI-ABA, and the Society of Actuaries. We verify the creditability of the presentation, and where appropriate, grant EA credit hours for such attendance under our status as a qualifying sponsor. Copyright and licensing provisions for such webcasts, while allowing us to transmit them live to our employees, may not necessarily allow us to retain copies of streaming video presentations or other outline or handout material for future use. We believe the regulations should address record retention for live webcasts whose content has been verified by qualifying sponsors.

Advertising

Paragraph 901.20(g) sets out rules on solicitation and includes this wording "an enrolled actuary may not make an uninvited written or oral solicitation of employment related to actuarial services if the solicitation violates federal or state law."

Under the current regulations, the use of the EA designation on a business card or letterhead is explicitly permitted. We recommend that the proposed regulations be revised to include a specific approval for use of the enrolled actuary designation on a business card, as part of a letterhead, and in a listing of employees of a firm.

Professional Duty

Paragraph 901.20(b) requires an enrolled actuary (1) to perform actuarial services only in a manner fully ...consistent with relevant standards of professional responsibility and ethics for

actuarial practice, and (3) upon learning of another enrolled actuary's material violation of "this section" report the violation to the Executive Director.

While it is inarguably desirable that enrolled actuaries perform actuarial services consistent with the relevant standards of professional responsibility and ethics for actuarial practice, these phrases are ambiguous. The American Academy of Actuaries has promulgated a Code of Professional Conduct and Actuarial Standards of Practice that have been adopted by the major actuarial bodies in the United States. We recommend replacing the nebulous standard of the proposed regulations with one that references compliance with the Code of Professional Conduct and relevant Actuarial Standards of Practice.

Under the code of conduct discussed in the preceding paragraph, an actuary who becomes aware of a material violation must, subject to certain requirements as to confidentiality, notify the Actuarial Board for Counseling and Discipline (ABCD). Members of the ABCD are required to maintain confidentiality regarding reported violations. Absent a revision of the rules of confidentiality for members of the ABCD, adoption of the proposed standard set out in 901.20(b)(3) will place every enrolled actuary who is a member of the ABCD in an impossible situation. If they tell the Executive Director, they breach their responsibility to maintain confidentiality. If they refrain from telling the Executive Director, they risk disenrollment for such failure. Similar problems arise for anyone prohibited through professional and contractual rules for confidentiality from revealing such ethical violations. In addition, a lawyer who is an enrolled actuary and who is retained by an enrolled actuary, from whom he learns of material violations of the regulations, is in an impossible situation regarding the obligation to maintain attorney client privilege. Finally, investigations pursued by the Executive Director into the activities of the reported actuary may lead to that actuary filing suit against the enrolled actuary who filed the report with the Executive Director, an unfortunate and undesirable result.

Because the requirements of proposed regulations 901.20(b)(3) create legal questions as to their application to any enrolled actuary who is a lawyer, and create significant problems for other enrolled actuaries, we recommend withdrawing 901.20(b)(3). We instead urge review to determine whether the Joint Board can or should impose a blanket requirement of notification on all enrolled actuaries. It may be more effective for the Joint Board to seek information on material violations from the DOL, PBGC, and IRS.

Thank you for this opportunity to express our views and recommendations.

Sincerely,

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